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U.S. House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

March 2, 2006

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The Honorable Christopher Cox
Chairman
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Chairman Cox:

In December 2004, the Securities and Exchange Commission announced the establishment of the Advisory Committee on Smaller Public Companies to evaluate the impact of securities regulations on smaller public companies and recommend changes to alleviate unnecessary regulatory burdens. We have closely monitored the Advisory Committee's progress in reviewing the securities laws and, in particular, the Section 404 internal control requirements of the Sarbanes-Oxley Act of 2002. This week, the Advisory Committee is scheduled to release for comment a draft of its final report including recommendations easing certain regulatory requirements.

We write to you today not to assess the content of the draft report, but to express our views on the Commission's authority to implement the Advisory Committee's proposals (whatever their final form may be) relating to provisions of the Sarbanes-Oxley Act. As the Advisory Committee has previewed its recommendations in public meetings over the past few months, the Commission's authority to implement such recommendations and, in particular, those relating to Section 404 of the Sarbanes-Oxley Act, has been the subject of some debate. We write to offer our support of the view that the Commission currently possesses the authority to provide relief from provisions of the Sarbanes-Oxley Act both under Section 36(a) of the Securities Exchange Act of 1934 and Section 3(a) of the Sarbanes-Oxley Act.

Pursuant to the National Securities Markets Improvement Act of 1996, Congress granted the Commission broad authority under Section 36(a) of the Exchange Act to exempt companies with respect to any provision, rule, or regulation under the Exchange Act. Congress clearly intended that the Commission would have the authority under Section 36 of the Exchange Act to tailor rules and regulations for companies as it deems appropriate. The House Committee report accompanying the legislation granting this exemptive authority affirms this intent: "The Committee expects that the Commission will use this authority to promote efficiency, competition and capital formation in the marketplace, consistent with the public interest and investor protection."

While Section 404 is not a provision included in the Exchange Act and some have questioned whether the Commission's exemptive authority would apply to the Sarbanes-Oxley Act, the Sarbanes-Oxley Act and Section 404 are inexorably linked to the Exchange Act in a number of ways. For instance, in June 2003, the Commission

promulgated rules for issuers pursuant to Section 404 under the reporting requirements of the Exchange Act. In addition, in a preliminary version of its draft report, the Advisory Committee references two reasons for the Commission's exemptive authority being applicable to the Sarbanes-Oxley Act: Section 13(b)(2)(B) of the Exchange Act requires issuers to maintain the internal controls upon which management and auditors must report under Section 404; and the Exchange Act and the Sarbanes-Oxley Act must be construed together as they relate to the same subject matter under the legal canon of construction *in pari materia*. For the aforementioned reasons, it is clear that the Commission's exemptive authority applies to the Sarbanes-Oxley Act.

In addition to this general exemptive authority under the Exchange Act, Section 3(a) of the Sarbanes-Oxley Act granted the Commission broad authority to adopt rules and regulations under the Act "as may be necessary or appropriate in the public interest or for the protection of investors." Clearly the Commission has the authority to adopt and tailor rules under Section 404 of the Sarbanes-Oxley Act.

The view that the Commission currently possesses the requisite exemptive authority with respect to the Sarbanes-Oxley Act is consistent with the Commission's past actions. In adopting its final rule on the internal control requirements of Section 404 in June 2003, the Commission specifically exempted asset-backed issuers. Furthermore, in November 2004, the Commission, pursuant to its exemptive authority under Section 36 of the Exchange Act, delayed the internal control reporting requirements for certain public companies as "necessary and appropriate in the public interest and consistent with the protection of investors."

Again, we write not to express our position on the merits of the Advisory Committee's preliminary recommendations, but rather to affirm our support of the view that the Commission currently possesses the authority under both the Exchange Act and the Sarbanes-Oxley Act to provide relief from the provisions of the Sarbanes-Oxley Act. Given the fact that legislation to amend the internal control requirements of the Sarbanes-Oxley Act will not be considered during this session of Congress, it is important that the Commission proceed as it deems appropriate.

We thank you for your consideration of our views.

Yours truly,



Michael G. Oxley
Chairman
Committee on Financial Services



Richard H. Baker
Chairman
Subcommittee on Capital Markets, Insurance and
Government Sponsored Enterprises

cc: Paul S. Atkins, Commissioner
Roel C. Campos, Commissioner
Cynthia A. Glassman, Commissioner
Annette L. Nazareth, Commissioner